

National Credit Union Administration

§ 708a.5

each senior management official to comply with the terms of § 708a.2(c) (the agreement shall be executed by NCUA as well, in the event of approval of the transaction);

(4) A proposed merger or conversion agreement;

(5) A proposed Notice of Meeting, as described in appendix A of this part;

(6) A copy of the form ballot and any accompanying materials to be sent to the members, as described in appendix A of this part;

(7) A complete copy of the package [to be] submitted to any other regulatory agencies involved in the merger or conversion;

(8) A copy of an appraisal of the value of the credit union, if the proposal is to convert or merge the credit union either directly or indirectly into a stock institution, and any plan for sale or distribution of stock to the credit union's members, officials and employees; and

(9) In the case of a federally-insured state chartered credit union, evidence that the state supervisory authority is in agreement with the merger or conversion proposal.

(b) *Coordination with State Supervisory Authority.* In the event the proposal is filed with the NCUA prior to receiving consent from the state supervisory authority:

(1) The Board will coordinate with the state supervisory authority; and

(2) The Board will not approve any merger or conversion unless it is approved by the state supervisory authority.

(c) *Waiver of NCUA rules and approval by state supervisory authority.* A federally-insured state credit union may, on a case-by-case basis, request a waiver of this part 708a from the Board and receive authority to proceed under state rules and procedures. In making such a request, the credit union shall demonstrate that the concerns underlying this part 708a are adequately addressed and, in particular that:

(1) Proceeding under state rules present no financial risk to the credit union or the NCUSIF;

(2) Adequate safeguards exist against breach of duty by, or preferential treatment of directors, committee

members and others involved in the transaction; and

(3) The transaction is otherwise fair to members and carried out pursuant to an informed and decisive membership vote.

§ 708a.4 Approval of proposal by NCUA.

If NCUA finds that the proposal complies with the provisions of this part and does not present an undue risk to the NCUSIF or unduly prejudice the members, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the stated purposes of the proposal. No proposal will be approved that does not *clearly* inform the members of the fundamental rights they would be giving up if their credit union converts or merges into a non credit union institution.

§ 708a.5 Approval of proposal by members.

(a) *Notification of members.* The members shall:

(1) Have the option of voting on the proposal either in person at a membership meeting or by mail ballot.

(2) Be given advance notice of the membership meeting in accordance with the provisions of appendix A of this part. The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 days nor less than 14 days prior to the date for the vote. The ballot to be used for the membership vote shall be in accordance with the provisions of appendix A of this part. The notice and ballot shall be provided to the members at the same time. If applicable, the notice and ballot shall be provided in both English as well as the native language of the majority of the members.

(3) Be made aware that the complete application and proposal are available for inspection at the credit union's branch offices during normal business hours.

(b) *Vote by members.* The proposal must be approved by the affirmative vote of a majority of the credit union's members.

(c) *Notice of Approval to members.* If the proposal for merger or conversion is approved by the membership and the NCUA Board, prompt and reasonable notice shall be given to all members.

§ 708a.6 Certification and completion of merger or conversion.

(a) *Certification of vote.* The board of directors shall certify the results of the membership vote to the Regional Director within 10 days after the vote is taken.

(b) *Completion.* Upon approval of the proposal by NCUA, the state supervisory authority (where the credit union is state chartered), the members and any federal agency with approval or regulatory authority for the transaction, the credit union may complete the merger or conversion.

(c) *Certification of completion.* Within 30 days after the effective date of the merger or conversion, the board of directors of the continuing institution shall certify the completion of the transaction to the Regional Director.

(d) *Cancellation of charter and insurance.* Upon NCUA's receipt of certification that the transaction has been completed, the charter of the federal credit union (if applicable) and the insurance certificate of the federally insured credit union will be canceled.

APPENDIX A TO PART 708a—NOTICE TO MEMBERS OF SPECIAL MEETING, DISCLOSURE AND BALLOT

(1) The Notice of Special Meeting must include the following:

(a) The date, time and place of the Meeting;

(b) A description of the matters to be voted upon at the Special Meeting;

(c) A statement in a prominent location in bold letters that "A DISCLOSURE STATEMENT HAS BEEN PROVIDED TO YOU WITH THIS NOTICE OF SPECIAL MEETING. THE DISCLOSURE MUST BE READ BEFORE VOTING ON THE PROPOSED ('CONVERSION' or 'MERGER', as appropriate)", and

(d) A statement that a Mail Ballot for the Special Meeting is enclosed.

(2) The Disclosure provided with the Notice must at a minimum provide the following information to the members:

(a) Factual information about the credit union, i.e. name and address of credit union and telephone number of contact person;

(b) Summary of the proposal which shall contain but not necessarily be limited to

current financial reports for the credit union and the other institution if a merger is proposed; a projected financial report for the continuing institution; analyses of share values; an explanation of any proposed share adjustments; and an explanation of any changes relative to insurance such as insurance of member accounts and life savings and loan protection insurance.

(c) Summary of the direct and indirect benefits to the credit union members, as well as any disadvantages, including a clear explanation of the nature of the change in the members' ownership interest in the reserves and undivided earnings of the credit union as a result of the merger or conversion;

(d) Summary of the direct and indirect benefits to management and other key persons at the credit union and at the new institution, including a comparison of salaries for those individuals employed by both the credit union and the new institution; copies of the certifications from the directors and committee members that they will receive no compensation either directly or indirectly from the new institution for a period of two years; and disclosure of any relationship by blood or marriage, of any of the officers, directors, key personnel or principal stockholders of the proposed institution to any officials or employees of the credit union.

(e) For each director, officer, key employee and consultant of the proposed institution, state in detail the names, positions, addresses, age and description of employment and educational background. Include any petitions for bankruptcy, civil judgments (indicate the plaintiff and the amount of the judgment), criminal conviction (indicate the nature of the charge) and any administrative action taken by a federal or state agency.

(f) Description of how the proposed merger/conversion results in a new financial institution without the unique characteristics of a credit union, for example, that the board of directors (that is, any new board members, since § 708a.2(c) prohibits compensation for a period of 2 years) may be compensated as officials instead of offering volunteer services, that the credit union will lose its tax exempt status, and any changes in the voting power of members.

(g) A dollar expenditure comparison chart of the estimated increases/decreases in regulatory and insurance fees;

(h) Itemized expenses incurred to date in the conversion process with an estimate as to future expenses;

(i) Management's discussion and analysis of the proposed conversion, including its economic advisability and how it will serve the needs of the members of the merging or converting credit union;

(j) Business and properties of the proposed institution—describe in detail the assets of the credit union and whether these assets